

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ERIC L. GONZALEZ,

No. C 10-03732 CW (PR)

Plaintiff,

v.

ORDER SERVING AMENDED  
COMPLAINT

DR. J. CHUDY, CHIEF MEDICAL  
OFFICER, et al.,

Defendants.

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Plaintiff, a state prisoner incarcerated at the Correctional Training Facility - Soledad (CTF), filed this pro se civil rights action pursuant to 42 U.S.C. § 1983, alleging that medical providers at CTF were deliberately indifferent to his serious medical needs in violation of his Eighth Amendment right to be free from cruel and unusual punishment. Plaintiff's motion for leave to proceed in forma pauperis has been granted.

On September 9, 2011, the Court conducted a preliminary screening of the complaint and determined that Plaintiff had failed to state a claim for relief under the Eighth Amendment against Defendants CTF Chief Medical Officer J. Chudy and CTF Registered Nurses Leary and Uy. The Court, therefore, dismissed the complaint with leave to amend for Plaintiff to allege facts showing that the Defendants acted with deliberate indifference to his serious medical needs.

Now pending before the Court is Plaintiff's amended complaint. Therein, he names as Defendants CTF Chief Medical Officers Dr. J. Chudy, Dr. Sepulveda and Dr. Bright. Plaintiff has not realleged his claims against CTF Registered Nurses Leary and Uy.

1 Having reviewed the allegations in the amended complaint, the  
2 Court finds Plaintiff states a cognizable claim for deliberate  
3 indifference to his serious medical needs by Chudy, Sepulveda and  
4 Bright, based on Plaintiff's allegations that those Defendants,  
5 knowing that Plaintiff was suffering from severe pain and swelling  
6 in his legs and required a podiatry consultation, failed to ensure  
7 that he received such consultation for more than a year.

8 CONCLUSION

9 For the foregoing reasons, the Court orders as follows:

10 1. The Clerk of the Court shall mail a Notice of Lawsuit and  
11 Request for Waiver of Service of Summons, two copies of the Waiver  
12 of Service of Summons, a copy of the amended complaint and all  
13 attachments thereto (docket no. 8) and a copy of this Order to CTF  
14 Defendants Dr. Chudy, Dr. Sepulveda and Dr. Bright.

15 The Clerk of the Court shall also mail a copy of the complaint and  
16 a copy of this Order to the State Attorney General's Office in San  
17 Francisco. Additionally, the Clerk shall mail a copy of this Order  
18 to Plaintiff.

19 2. Defendants are cautioned that Rule 4 of the Federal Rules  
20 of Civil Procedure requires them to cooperate in saving unnecessary  
21 costs of service of the summons and complaint. Pursuant to Rule 4,  
22 if Defendants, after being notified of this action and asked by the  
23 Court, on behalf of Plaintiff, to waive service of the summons,  
24 fail to do so, they will be required to bear the cost of such  
25 service unless good cause be shown for their failure to sign and  
26 return the waiver form. If service is waived, this action will  
27 proceed as if Defendants had been served on the date that the  
28 waiver is filed, except that pursuant to Rule 12(a)(1)(B),

1 Defendants will not be required to serve and file an answer before  
2 sixty (60) days from the date on which the request for waiver was  
3 sent. (This allows a longer time to respond than would be required  
4 if formal service of summons is necessary.) Defendants are asked  
5 to read the statement set forth at the foot of the waiver form that  
6 more completely describes the duties of the parties with regard to  
7 waiver of service of the summons. If service is waived after the  
8 date provided in the Notice but before Defendants have been  
9 personally served, the Answer shall be due sixty (60) days from the  
10 date on which the request for waiver was sent or twenty (20) days  
11 from the date the waiver form is filed, whichever is later.

12 3. Defendants shall answer the complaint in accordance with  
13 the Federal Rules of Civil Procedure. The following briefing  
14 schedule shall govern dispositive motions in this action:

15 a. No later than ninety (90) days from the date their  
16 answer is due, Defendants shall file a motion for summary judgment  
17 or other dispositive motion. The motion shall be supported by  
18 adequate factual documentation and shall conform in all respects to  
19 Federal Rule of Civil Procedure 56. If Defendants are of the  
20 opinion that this case cannot be resolved by summary judgment, they  
21 shall so inform the Court prior to the date the summary judgment  
22 motion is due. All papers filed with the Court shall be promptly  
23 served on Plaintiff.

24 b. Plaintiff's opposition to the dispositive motion  
25 shall be filed with the Court and served on Defendants no later  
26 than sixty (60) days after the date on which Defendants' motion is  
27 filed.

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1 The Ninth Circuit has held that the following notice should be  
2 given to pro se plaintiffs facing a summary judgment motion:

3 The defendant has made a motion for summary  
4 judgment by which they seek to have your case dismissed.  
5 A motion for summary judgment under Rule 56 of the  
6 Federal Rules of Civil Procedure will, if granted, end  
7 your case.

8 Rule 56 tells you what you must do in order to  
9 oppose a motion for summary judgment. Generally, summary  
10 judgment must be granted when there is no genuine issue  
11 of material fact -- that is, if there is no real dispute  
12 about any fact that would affect the result of your case,  
13 the party who asked for summary judgment is entitled to  
14 judgment as a matter of law, which will end your case.  
15 When a party you are suing makes a motion for summary  
16 judgment that is properly supported by declarations (or  
17 other sworn testimony), you cannot simply rely on what  
18 your complaint says. Instead, you must set out specific  
19 facts in declarations, depositions, answers to  
20 interrogatories, or authenticated documents, as provided  
21 in Rule 56(e), that contradict the facts shown in the  
22 defendant's declarations and documents and show that  
23 there is a genuine issue of material fact for trial. If  
24 you do not submit your own evidence in opposition,  
25 summary judgment, if appropriate, may be entered against  
26 you. If summary judgment is granted [in favor of the  
27 defendants], your case will be dismissed and there will  
28 be no trial.

17 See Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998) (en  
18 banc).

19 Plaintiff is advised to read Rule 56 of the Federal Rules of  
20 Civil Procedure and Celotex Corp. v. Catrett, 477 U.S. 317 (1986)  
21 (party opposing summary judgment must come forward with evidence  
22 showing triable issues of material fact on every essential element  
23 of his claim). Plaintiff is cautioned that because he bears the  
24 burden of proving his allegations in this case, he must be prepared  
25 to produce evidence in support of those allegations when he files  
26 his opposition to Defendants' dispositive motion. Such evidence  
27 may include sworn declarations from himself and other witnesses to  
28 the incident, and copies of documents authenticated by sworn

1 declaration. Plaintiff will not be able to avoid summary judgment  
2 simply by repeating the allegations of his complaint.

3 c. Defendants shall file a reply brief no later than  
4 thirty (30) days after the date Plaintiff's opposition is filed.

5 d. The motion shall be deemed submitted as of the date  
6 the reply brief is due. No hearing will be held on the motion  
7 unless the Court so orders at a later date.

8 4. Discovery may be taken in this action in accordance with  
9 the Federal Rules of Civil Procedure. Leave of the Court pursuant  
10 to Rule 30(a)(2) is hereby granted to Defendants to depose  
11 Plaintiff and any other necessary witnesses confined in prison.

12 5. All communications by Plaintiff with the Court must be  
13 served on Defendants, or Defendants' counsel once counsel has been  
14 designated, by mailing a true copy of the document to Defendants or  
15 Defendants' counsel.

16 6. It is Plaintiff's responsibility to prosecute this case.  
17 Plaintiff must keep the Court informed of any change of address and  
18 must comply with the Court's orders in a timely fashion.

19 7. Extensions of time are not favored, though reasonable  
20 extensions will be granted. Any motion for an extension of time  
21 must be filed no later than fifteen (15) days prior to the deadline  
22 sought to be extended.

23 IT IS SO ORDERED.

24 DATED: 1/6/2012

  
CLAUDIA WILKEN  
UNITED STATES DISTRICT JUDGE